

Response dated: July 29, 2009  
App. No.: 10/791,916 Filed: March 3, 2004  
Response to Office Action of April 29, 2009

**REMARKS**

Claims 47-51, 72, 73, and 93 were pending in this application. By this response, claims 47, 73, and 93 have been amended to incorporate the features of claim 51, and claim 51 has been cancelled. New claims 94 and 95 have been added. The amendments to the claims and the new claims are supported throughout the specification, and particularly in FIGS. 1 and 2 of the Application as filed. No new matter has been added. Amendment or cancellation of any of the claims is not to be considered a dedication to the public of any subject matter.

Thus, claims 47-50, 72, 73, and 93-95 are currently under consideration. Reconsideration of these claims is requested in view of the amendments and the following remarks.

**ADVISORY ACTION OF JULY 13, 2009**

The Applicants thank the Examiner for the Advisory Action mailed July 13, 2009, and for indicating that the previous rejections can be overcome if the Applicants add the limitations of proposed new claim 96 (from the response dated June 26, 2009) to all of the independent claims and specifically discloses the location of the barbs or hooks identifying where the peripheral edge is located.

As suggested by the Examiner, the Applicants have herein amended the independent claims to indicate that the anchoring elements are hooks or barbs located on the peripheral edge (as illustrated in FIGS. 1-8), and that the peripheral edge is positioned between the productive and non-productive chambers when it is inserted into a ventricle and inflated. The Applicants are also herewith including a Request for Continued Examination, as requested by the Examiner.

The Applicants therefore believe that the rejections of all of the pending claims have been overcome, and request allowance of the pending claims.

Response dated: July 29, 2009  
App. No.: 10/791,916 Filed: March 3, 2004  
Response to Office Action of April 29, 2009

### **INFORMATION DISCLOSURE STATEMENTS**

The Applicants thank the Examiner for acknowledging the Information Disclosure Statements filed 4/15/2009 and 12/31/2008.

An Information Disclosure Statement is also filed herewith. Applicants respectfully request that the Information Disclosure Statements dated 07/29/2009, 4/26/2007 and 6/29/2007 be considered, and the PTO Forms 1449 be initialed and returned with the next Action.

### **CLAIM REJECTIONS UNDER 35 U.S.C. § 102**

#### Claims 47-51, 72, 73, and 93

Claims 47-51, 72, 73, and 93 currently stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,547,821 to Taylor et al. ("Taylor").

As previously mentioned, the Applicants have hereby amended the independent claims to clarify the structural limitations of the method claims, as requested by the Examiner in the final Office Action of April 29, 2009 and the Advisory Action of July 13, 2009.

All of the currently pending claims (e.g., claims 47-50, 72, 73, and 93-95) are therefore patentable over Taylor. The pending claims all recite steps absent and not suggested by Taylor. In particular, the applicant's pending claims recite the steps of providing a device comprising an *inflatable partitioning element with a peripheral edge having at least one hook or barb anchoring element and anchoring the peripheral edge of the inflatable partitioning element to a wall of the ventricular chamber so that the peripheral edge separates the productive and non-productive chambers.*

Instead, Taylor teaches an inflatable ventricular displacement device, as illustrated in FIGS. 12A-13. This device is inflated in the apex of the heart to displace fluid from the heart.

The volume displacement devices taught by Taylor does not include a peripheral edge having at least one anchoring element. Instead, the devices taught by Taylor include an apical end cap or other fixture for securing it to the apex of the ventricle (e.g., Col. 17, lines 52-58; col.

Response dated: July 29, 2009  
App. No.: 10/791,916 Filed: March 3, 2004  
Response to Office Action of April 29, 2009

18, lines 1-8). Thus, Taylor does not teach anchoring the peripheral edge of the inflatable partition element to a wall of the ventricle chamber to secure the device to the wall of the ventricle. Taylor only describes apical anchoring, rather than peripheral anchoring.

Since Taylor does not teach all of the features recited in method claims 47-50, 72-73, 93 and new claims 94-95, Taylor cannot anticipate these claims. The Applicants respectfully request withdrawal of the 35 U.S.C. §102(e) rejection of these claims over Taylor, and allowance of all of the pending claims.

Response dated: July 29, 2009  
App. No.: 10/791,916 Filed: March 3, 2004  
Response to Office Action of April 29, 2009

### **CONCLUSION**

In light of the remarks set forth above, Applicants respectfully request the Examiner expedite the prosecution of this patent application to issuance. If it is determined that a telephone conference would aid in the prosecution of this application, the Examiner is invited to telephone the undersigned at (650) 287-2164.

In the event the U.S. Patent and Trademark Office determines that an extension and/or other relief is required, Applicants petition for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to Deposit Account No. 50-4050 referencing docket no. 10078-703.201. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Respectfully submitted,

Date: July 29, 2009

By:

  
Richard D. Shoop  
Registration No. 45,763

SHAY GLENN LLP  
2755 CAMPUS DRIVE, SUITE 210  
SAN MATEO, CA 94403  
TELEPHONE: 650.287.2164  
FACSIMILE: 650.212.7562